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BILL



ANALYSIS

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House Bill 4773 (Substitute H-1 as passed by the House)
Sponsor: Representative Paul Condino
House Committee: Judiciary
Senate Committee: Families and Human Services

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CONTENT

The bill would amend the Friend of the Court (FOC) Act to do all of the following:

- Revise the time periods for a periodic review of a child support order, and allow a review because of one party's incarceration or release from incarceration.**
- Change the procedures for initiating and conducting a review of a child support order, and modifying an order.**
- Require the FOC Bureau to develop guidelines for imputing income.**

Review

Under the Act, after a final judgment containing a child support order is entered in an FOC case, the FOC Office must review the order periodically. If a child is supported in whole or in part by public assistance, a review must be conducted at least once each 24 months, unless the FOC Office receives notice from the Family Independence Agency that there is good cause not to proceed with support action and neither party has requested a review. The bill would change this review period to at least once each 36 months.

Also, the FOC may initiate a child support order review if there are reasonable grounds to believe that the child support amount should be modified or that dependent health care coverage is available and the support order should be modified to include a health care coverage order. Reasonable grounds to review an order include temporary or permanent changes in the physical custody of a child that the court did not order; the child's increased or decreased need; probable access by an employed parent to dependent health care coverage; or changed financial conditions of a child support recipient or payer, including application for or receipt of public assistance, unemployment compensation, or worker's compensation. The bill would add to the reasonable grounds for review the support payer's or recipient's incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year. Within 14 days after receiving information that a support recipient or payer was incarcerated or released from incarceration, the FOC Office would have to initiate a review of the order. A review initiated by the FOC Office would not preclude the support recipient or payer from requesting a review.

The Act also requires the FOC Office to conduct a periodic review under the following circumstances:

- Upon receiving a written request from either party. Within 15 days after receiving the request, the FOC Office must determine whether the order is due for review. The FOC is not required to investigate more than one request received from a party each 24 months.
- If a child is receiving medical assistance, at least once each 24 months, unless the order

requires provision of health care coverage for the child and neither party has requested a review or the FOC Office receives notice from the FIA that there is good cause not to proceed with support action and neither party has requested a review.

-- If requested by the initiating state for a recipient of services in that state under Federal Title IV-D, at least once each 24 months. Within 15 days after receiving a review request, the FOC Office must determine whether an order is due for review.

The bill would change the time period for those reviews from at least once every 24 months to at least once every 36 months, and would change the period for determining whether an order is due for review from 15 days to 14 days.

In addition, the bill would require the FOC to conduct a review at the direction of the court.

Modification

The Act requires the FOC Office to petition the court if modification is determined to be necessary, unless 1) the difference between the existing and projected child support award is within the minimum threshold for modification of a support amount as established by the child support formula; or 2) the court previously determined that application of the formula was unjust or inappropriate and the FOC office determines that the facts of the case and the reasons and amount of the prior deviation remain unchanged. The bill would retain these provisions.

Under the Act, each party subject to a child support order must be notified of the right to request a review of the order and the place and manner in which make the request. For an FOC case, the notice must be given by the FOC Office or, pursuant to court rule, by the plaintiff using an informational packet required under the Act. The FOC Office must notify each party of a review of child support at least 30 days before the review is conducted, and the notice must request income, expense, or other information needed to conduct the review.

After a review, the FOC office must notify each party of a proposed change in the amount of child support, a proposed modification to order health care coverage, or a determination that there should be no change in the order. Notice of a change in child support or a health care coverage modification may be provided by or with a copy of the petition for modification. The notice also must inform the parties that either party may object, at a hearing before a court referee, to the proposed modification or determination that there should be no change. A petition for modification may be made at the same time the parties are provided with this notice.

The Act requires the FOC Office to make available to each party and his or her attorney a copy of the written report, transcript, recommendation, and supporting documents or a summary of supporting documents prepared or used by the FOC Office in its review, before the court modifies the order.

The bill would delete the review and modification procedures described above. Child support orders entered after the bill's effective date would have to be modified according to the bill. For a support order entered before the bill's effective date, the FOC Office would have to notify the parties of their right to a review as required by Federal law. That notice could be placed in a court order, as allowed by Federal law.

Under the bill, the FOC Office would have to initiate proceedings to review support by sending a notice to the parties. The notice would have to request information sufficient to allow the FOC to review support, state the date the information was due, and advise the parties concerning how the review would be conducted. After that information was due, but not sooner than 21 days after the date the notice was sent, the FOC would have to calculate the support according to the child support formula and send a notice to each party and his or her attorney. The notice would have to include all of the following:

- The amount calculated for support.
- The proposed effective date of the support amount.
- Substantially the following statement: "Either party may object to the recommended support amount. If no objection is filed within 21 days of the date this notice was mailed, an order will be submitted to the court incorporating the new support amount."

The notice also would have to inform the parties of how and where to file an objection.

The bill specifies that this notice would constitute a petition for modification of the support order and would have to be filed with the court.

At least 21 days after the date the notice was sent, the FOC Office would have to determine if an objection had been filed. If an objection were filed, the FOC would have to set the matter for a hearing before a judge or referee or, if the FOC received additional information with the objection, it could recalculate the support amount and send out a revised notice. If no objection were filed, the FOC would have to prepare an order that the court would have to enter if it approved of the order.

The FOC could schedule a joint meeting between the parties to attempt to expedite resolution of support issues in accordance with guidelines set forth in the Act.

In support review proceedings under the bill, a recommendation would have to state the calculations upon which the support amount was based. If the FOC recommended a support amount based on imputed income, the recommendation also would have to state the amount that would have been recommended based on the actual income of the parties, if the actual income were known. If income were imputed, the recommendation would have to specify all factual assumptions on which the imputed income was based. The FOC Office could impute income to a party who failed or refused to provide information requested under the bill.

At a hearing based on an objection to an FOC recommendation, the trier of fact could consider the FOC's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence was presented concerning that fact, if the parties agreed or did not object.

The court could not require proof of a substantial change in circumstances to modify a child support order when support was adjusted under a periodic review conducted by the FOC Office.

A party also could file a motion to modify support. Upon a party's motion, the court could modify a child support order only upon finding a substantial change in circumstances, including health care coverage becoming newly available to a party and a change in the support level.

Support Formula

The Act requires the FOC Office to use the child support formula developed by the FOC Bureau in calculating the child support award. The bill would delete a provision under which the FOC Office must prepare a written report if it determines from the facts of the case that application of the child support formula would be unjust or inappropriate, or that income should not be based on actual income earned by the parties.

FOC Bureau

The Act created the State FOC Bureau within the State Court Administrative Office, under the supervision and direction of the Supreme Court. The Bureau's responsibilities include establishing a nine-person State Advisory Committee composed of three public members, three attorneys, and three human services professionals, each of whom must be a member of a citizen advisory committee. Under the bill, the State Advisory Committee members would not

have to be members of a citizen advisory committee, but the Bureau would have to give preference to a member of a citizen advisory committee.

Also, the Act requires the FOC Bureau to develop and provide the FOC Office with all of the following:

- Form motions, responses, and orders for use by an individual in requesting the court to modify child support, custody, or parenting time, or in responding to a motion for modification, without legal counsel.
- Instructions on preparing and filing the forms, instructions on service of process, and instructions on scheduling a support, custody, or parenting time modification hearing.

Under the bill, the Bureau also would have to develop and provide to the FOC Office guidelines for imputing income for the calculation of child support.

MCL 552.517 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on the Family Independence Agency.

The bill could decrease administrative costs for the FOC due to the proposed decrease in the frequency of required reviews and the potential ability to impute for the calculation of child support.

Fiscal Analyst: Constance Cole
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.